

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 10TH DECEMBER 2007 / 19TH AGRAHAYANA 1929

Bail Appl.No. 7528 of 2007()

CRIME NO. 300/2000 OF KALPETTA POLICE STATION
CRLMP.1355/2007 of DISTRICT COURT, KALPETTA
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PETITIONER/ACCUSED:

SULAIMAN, S/O. MAMMUKUTTY HAJI,
AGED 45 YEARS, NEDUTHOZUKAYIL (H), AMBUKUTHI,
THOVARIMALA POST, BATTERY TALUK, WAYANAD DISTRICT.

BY ADV. SRI.A.K.SRINIVASAN
SRI.N.S.MOHAMMED USMAN
SRI.A.S.BENOY
SRI.JIMMY GEORGE

RESPONDENTS: COMPLAINANT:

STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, REPRESENTING THE SUB-INSPECTOR OF POLICE,
KALPETTA POLICE STATION, WAYANAD DISTRICT.

BY PUBLIC PROSECUTOR SRI. S.U. NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION
ON 10/12/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

R. BASANT, J.

B.A.No. 7528 of 2007

Dated this the 10th day of December, 2007

ORDER

Application anticipatory bail. The petitioner faces allegations in a crime registered under Section 55(a) of the Kerala Abkari Act. The crux of the allegations is that 2740 packets, each containing 100 ml. of Karnataka arrack was allegedly being transported in a vehicle. That vehicle developed some mechanical trouble. The vehicle was parked by the side of the road. Four persons (not the petitioner) were available in the vehicle. Their movements generated suspicion in the mind of the local people. After some time, the petitioner allegedly reached the scene in another car. It was found that contraband articles were available in the car. The local people were attempted to be silenced by the petitioner by offering them illegal gratification. They did not agree. They went to the police station and lodged a complaint. The police came to the scene. Seeing that the

defacto complainant was proceeding to make a complaint, the petitioner disappeared from the scene. Investigation commenced. The petitioner was not arrested at the crime stage. Investigation is now complete. Final report has already been filed. Cognizance has already been taken by the learned Magistrate. The petitioner apprehends arrest in execution of the coercive processes issued by the court.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. He has nothing to do with the alleged transportation of the contraband articles. He has been vexatiously brought into the array of accused by the defacto complainant, who is a business rival to the petitioner herein. The petitioner is sick and old. He prays that the discretion under Section 438 Cr.P.C. may be invoked to save him from the undeserved trauma of arrest and detention.

3. The learned Prosecutor opposes the application. He submits that there are clinching circumstances, which clearly point to the complicity of the petitioner. There is no merit in the contention that the petitioner is innocent. His illness will not be a reason to claim anticipatory bail. If those assertions are true, he can claim regular bail

under Section 437 Cr.P.C. if he satisfies the learned Magistrate. At any rate, there is absolutely no necessity to invoke the extra ordinary equitable jurisdiction under Section 438 Cr.P.C. in favour of the petitioner, submits the learned Prosecutor.

4. The learned Prosecutor, in particular, points out that the investigation clearly reveals that the petitioner was the owner in possession of the vehicle as per an agreement with the registered owner at the relevant time. The Prosecutor relies on the circumstance that shortly after the vehicle was seen stranded for mechanical defect, the petitioner had reached the scene. He also relies on the fact that the petitioner had attempted to purchase the local people and silence them. Before the police came, he had disappeared also. These circumstances may not be lost sight of, submits the learned Prosecutor.

5. I have considered all the relevant inputs. I find merit in the opposition by the learned Prosecutor. There are no features in this case, which can justify the invocation of the extra ordinary equitable discretion under section 438 Cr.P.C. in favour of the petitioner. This I am satisfied is a fit case where the petitioner must resort to the

ordinary and normal procedure of appearing before the Investigator or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course.

6. This application is accordingly dismissed. I may however hasten to observe that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously- on the date of surrender itself.

(R. BASANT)
Judge

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